
(1957) 01 AHC CK 0005
In the Allahabad High Court
Case No : Civil Revision No. 886 of 1954

Phul Kumari

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 31-01-1957

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 9
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), 115, 3, 4, 5
Constitution of India, 1950 — Article 226, 227, 228, 234, 237
Contempt of Courts Act, 1971 — Section 2
Criminal Procedure Code, 1898 (CrPC) — Section 17, 21, 439
General Clauses Act, 1897 — Section 3
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 30, 330, 48

Citation : AIR 1957 All 495 : (1958) 28 AWR 330

Hon'ble Judges : Desai, J

Bench : Single Bench

Advocate : Shanti Bhushan, for the Appellant; V.P. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Desai, J.—This is an application u/s 115, C. P. C., for revision of an order passed by a compensation officer under the Zamindari Abolition and Land Reforms Act (No. I of 1951). The applicant is the intermediary, who is entitled to compensation for the loss of her proprietary rights. The compensation payable to her is being assessed by the compensation officer, who prepared a draft compensation assessment roll. The applicant filed an objection against it on two grounds one of which was that the rental value had been under-estimated. One of her tenants is the opposite-party No. 2, the Upper Ganges Sugar Mills Limited. The dispute before the compensation officer was at what rent the land let out to the opposite-party should be assessed. It has obtained a Sanad for bhumidhari rights.

The applicant informed the compensation officer that she had applied to Government for cancellation of its Sanad and her application was pending.

Thereupon the compensation officer suo motu impleaded it as a party in the compensation proceedings. A notice was issued to the opposite-party which appeared and objected to its being impleaded contending that it had no concern with the amount of compensation payable to the applicant and that it was unnecessarily impleaded. The applicant also objected to the impleading of the opposite-party but the compensation officer refused to cancel his order. Now she wants his order to be set aside u/s 115, C. P. C.

2. The question is whether Section 115, C. P. C., at all applies. Under it a High Court may call for a record of any case decided "by any Court subordinate to such High Court and in which no appeal lies thereto" and may make such order in the case as it thinks fit if the subordinate Court has exercised jurisdiction not vested in it or exceeded it or exercised it with material irregularity. The compensation officer is at present deciding objections u/s 48 of the Zamindari Abolition and Land Reforms Act. Any objection decided by him is deemed to be a decree of a civil court u/s 49.

Undoubtedly he acts as a court when disposing of the objections. u/s 48 he has all the powers of a civil court and is required to follow the procedure laid down in the CPC for the hearing and disposal of suits relating to immovable property. This provision would not by itself make Section 115, C. P. C., applicable to any order passed by him; he has all the powers of a civil court but is not made subject to all the liabilities to which a civil court is liable under the Code. Only those provisions of the Code that relate to the hearing and disposal of suits are made applicable to the proceedings before him.

But even if Section 115 of the Code were to be applied, it would have to be applied as it stands and this Court would have jurisdiction to interfere with an order passed by him only if he were a Court sub-ordinate to this Court. His is a special court created under the Zamindari Abolition Act and different from civil courts created under the Bengal and Assam. Civil Courts Act (No. XII of 1887). Civil courts in this State are only those civil courts that have been created under the Bengal and Assam Civil Courts Act.

All those courts are under the administrative control of the District Judge subject to the superintendence of the High Court, vide Section 9. They have ordinary and appellate jurisdictions mentioned in Chapter III of the Act. It is provided in Section 20 that an appeal from a decree of a District Judge shall lie to the High Court and in Section 21 that an appeal from a decree or order of a Munsif shall lie to the District Judge. The words "immediately subordinate" are used in Section 38, and which courts are immediately subordinate to which courts for the purposes of Section 38 is stated in Section 39. The court of a Compensation Officer is created u/s 319 of the Zamindari Abolition and Land Reforms Act, and it is to exercise the powers conferred upon it by or under the Act.

It is laid down in Section 325 that a proceeding in it shall be deemed to be a judicial proceeding within the meaning of certain sections of the Indian Penal

Code; this means that it is not created as a Civil court. An order of it deciding an objection u/s 48 is u/s 49 to be deemed to be a decree of a civil court; this also indicates that it is not a civil court. The same inference is to be drawn from the provision in Section 48 conferring upon it all the powers of a civil court and requiring it to follow the procedure laid down in the Code of Civil Procedure. Section 330 bars the jurisdiction of a civil court in respect of any order passed under Part I of the Act.

Section 48 is contained in Part I of the Act and, therefore, a Compensation Officer's order disposing of an objection cannot be challenged in a Civil Court. This express exclusion of a civil court's jurisdiction means that the Compensation Officer does not act as a civil court. An appeal from his order on an objection is appealable to a District Judge (or to the High Court if the valuation exceeds a certain amount) and a Second Appeal would lie to the High Court on any of the grounds specified in Section 100, C. P. C., see Sections 50 and 51. These provisions regarding appeals in spite of provisions regarding appeals from the civil courts in the Bengal and Assam Civil Courts Act also show that a Compensation Officer does not act as a civil court. The Compensation Commissioner and his assistant exercise powers of supervision and superintendence over his work, vide Section 320 (1); there is no provision investing this Court with powers of superintendence and supervision over his court.

Under Section 333 the Board of Revenue may call for the record of any suit or proceeding referred to in Schedule II decided by any "subordinate court", and correct errors of jurisdiction. Proceedings u/s 48 are not included in Schedule II; therefore, the Board has revisional jurisdiction over an order passed by a Compensation Officer. The same, however, cannot be assumed by this Court merely because it does not vest in the Board. I have referred to Section 333 principally because it uses the words "subordinate court", and which are subordinate courts is not stated anywhere in the Act. The word "subordinate" has two distinct meanings, (1) "of interior importance or rank" and (2) "subservient to, or under the authority of".

A court may be a subordinate court in the sense that it is of an interior grade or status, but it does not follow that it is subordinate to, or under the authority of another court, such as the High Court. A court that is subordinate in the sense that it is of an interior grade or status may not be subservient to or under the authority of any other court; in spite of the finality of its orders, in grade or status it may be subordinate to a High Court or a Board of Revenue. In the phrase "subordinate to....." the word "subordinate" is used in the second sense but in the phrase "subordinate court" it is used in the first sense, unless it refers to a "court subordinate to". The words used in Section 333 are "subordinate court", the word "subordinate" is used in the first sense and since all courts created by the Act are of an inferior grade or status in comparison to the Board of Revenue, it has not been explained which courts are subordinate

courts.

The question of a court's being subordinate to another should arise when the word is used in the second sense. When one has to consider whether a court is subordinate to a High Court within the meaning of Section 115, it is not enough to show that it is a subordinate court in the sense of being a court of an inferior grade or status; it must be shown that it is subservient to, or subject to some authority of, the High Court. Subservient may arise out of some authority over the court being vested in a superior court or it may be created by a statutory provision independently of any statutory authority being exercised over it.

A court is subordinate to a court which has appellate or supervisory jurisdiction over it; appellate or supervisory jurisdiction is exercised over it by virtue of a statutory provision. But a court can also be declared by a statutory provision to be subordinate to another court even though it exercises no appellate or supervisory jurisdiction over it. Similarly a statute may declare that a court shall not be subordinate to another court even though it exercises appellate jurisdiction over it. There are indications that the subordination contemplated by Section 115 is the subordination not arising out of the subjection to appellate or supervisory jurisdiction but the subordination arising out of a statutory provision.

Section 275 of the U. P. Tenancy Act contained a provision exactly similar to that in Section 333; that Act also did not contain any provision declaring which courts created by it were subordinate to the Board of Revenue because they were all courts of inferior status. There was Section 282 declaring for certain purposes which courts were subordinate to the Collector and which, to the Sub-Divisional Officer. Section 276 empowered a High Court to exercise revisional jurisdiction over subordinate revenue courts in certain cases. Here also "subordinate..... courts" meant "revenue courts of inferior status"; there having been no provision making any of the courts created by it subservient to, or under the authority of, the High Court the words could not have been used in the second sense.

Since all the revenue courts created by the Act (except the Board of Revenue) were of an inferior status in comparison to the High Court, there was no necessity of describing which courts were subordinate revenue courts. No statutory provision is required for declaring a court to be of an inferior status or grade in comparison to a High Court or a Board of Revenue; but a court cannot be subservient to, or under the authority of, a High Court (or even a Board of Revenue) unless the latter has been invested with some jurisdiction over it.

A court cannot be subservient to a High Court unless the latter has been given some power to control it. Therefore, a court cannot be a court subordinate to a High Court in the absence of a statutory provision. Since "subordinate court" does not mean the same thing as "court subordinate to", the courts referred to as "subordinate courts" in the Zamindari Abolition and Land Reforms Act cannot be held to be courts subordinate to the High Court within the meaning of the Code of Civil Procedure.

The word "subordinate" was used in both the senses in the U. P. Tenancy Act; it was used in the first sense in Sections 275 and 276 and in the second sense in Sections 280 and 281. Because subserviency depends upon statutory authority, there was Section 282 describing which courts were subordinate to the Collector and the Sub-Divisional Officer within the meaning of Sections 280 and 281. u/s 264 an appeal lay to the Collector from every decree Of an Assistant Collector of the second class, but the latter was declared to be subordinate to the Sub-Divisional Officer.

Under Section 265 an appeal lay to the District Judge or to the Commissioner from the decree of an Assistant Collector of the first class, but he was declared to be subordinate not to either of them but to the Collector, who had no right to hear any appeal except from certain orders passed by him. These provisions show that subordination of one court to another does not depend upon its being subject to the other's appellate jurisdiction.

3. The words used in Section 115 of the CPC are "court subordinate toHigh Court"". The word "subordinate" is used in second sense, as explained above. Since which courts are subservient to a High Court is a matter of statutory provision, we find Section 3 in the Code laying down which courts are subordinate to which courts; this subordination is, as expressed in the section itself, "for the purpose of this Code". A District Court is subordinate to the High Court and every inferior civil court including a court of small causes is subordinate to the High Court and the District Court. When for the purposes of the Code of Civil Procedure, including those of Section 115, every inferior civil court is subordinate to the High Court the words "subordinate court" in Section 115 must mean every civil court including a district court and a court of small causes.

There would be no justification for bringing in other courts within the subordination of the High Court unless there is a statutory provision. The words "subordinate court" in Section 115 must be understood in the sense given to them in Section 3; otherwise the words "for the purposes of this Code" would be rendered useless. According to the maxim *expressio unius est exclusio alterius* also, the express mention of certain courts as being subordinate to the High Court, excludes others being subordinate to it. Even if one does not read more in Section 3 than what is contained therein, one would require a cogent ground for holding that a court not mentioned therein is a court subordinate to the High Court.

Section 115 C. P. C., must refer to a court which is governed by the Code of Civil Procedure; a court not governed by the Civil Procedure Code, i. e., a court not within the contemplation of the CPC cannot be a court subordinate to the High Court within the meaning of Section 115. The only courts that the CPC caters for are the civil courts established under the Bengal and Assam Civil Courts Act. The very preamble of the Code states that it consolidates and amends the laws "relating to the Procedure of the Courts of Civil Judicature".

Hence the word "court" wherever it occurs in the Code necessarily means a court of civil judicature. The subordinate courts referred to in Section 115 must also mean subordinate courts of civil judicature. Courts of civil judicature are only those courts that are created by the local Civil Courts Acts, such as the Bengal and Assam Civil Courts Act, the Punjab Courts Act etc. There are other courts (and tribunals) also created by other Acts; they are not civil courts and the procedure before them is not automatically governed by the Code. They cannot, therefore, be subordinate courts within the meaning of Section 115.

It is open to the Acts creating them to provide for any procedure to be followed before them; they may contain the whole procedure, or they may adopt by reference the procedure prescribed for some other courts in some other statute or they may combine the two methods. It is a frequent practice with such Acts to lay down that the procedure before the courts created by them would be governed by the Code of Civil Procedure; this is only a compendious way of prescribing the same procedure as is prescribed for the civil courts; instead of reproducing all the relevant provisions of the Code they simply refer to them.

But by laying down that their procedure would be governed by the CPC they do not convert them into civil courts because the CPC is not a monopoly of civil courts. Sections 4(1) and Section 5(1) of the Code contemplate that the same procedure may be prescribed for courts other than the civil courts. If the other courts do not become civil courts merely because they are governed by the Code of Civil Procedure, they cannot become subordinate courts within the meaning of Section 115. It has been observed in *A. Hasan Vs. Mohammad Shamsuddin and Another*, *Bishambhar Nath Vs. Achal Singh*, and *Purshottam Janardan v. Mahadu Pandu*, ILR 37 Bom 114 (C) that enumeration of courts subordinate to the High Courts within the meaning of Section 115 is not exhaustive.

Unfortunately no reasons for thinking that Section 3 does not exhaustively lay down which courts are subordinate to the High Court within the meaning of Section 115 have been given in these cases. In *Rajah of Venkatagiri v. Mahaboob Saheb*, AIR 1944 Mad 139 (D) it was stated that revenue courts are also subordinate to the High Court within the meaning of Section 115. On the other hand, in *Sultan Ali v Nur Hussain* AIR 1949 Lah 131 (E) it was held that a court not mentioned in the section is not subordinate to the High Court. Munir, C. J., pointed out at page 161 that Section 3 contains the only definition of subordination given in the Code, and observed that "the presumption is that the word "subordinate" in Section 115 of the Code is used in the sense in which it is defined in Section 3."

He referred to the provisions of Sections 44 and 18 of the Punjab Courts Act, and refused to accept the broad and unqualified proposition that once it is held that an authority is exercising the function of a court in relation to rights that may be called civil, it must be held to be subordinate to the High Court. I respectfully agree with him rather than with the other authorities. Since Section 3 is enacted for the purposes of the Code and deals with all the civil courts and their

subordination to one another, I have no doubt that it is exhaustive and that no court other than that mentioned in it can be said to be subordinate to a High Court within the meaning of Section 115.

4. An Act creating new civil rights or liabilities and providing new remedies may either leave the civil rights and liabilities to be enforced by the existing civil courts or may create special courts for enforcing them. If they are left to be enforced by the existing civil courts, as such, they would remain subordinate courts within the meaning of Section 115, C. P. C., when enforcing them. But if new courts are created, the very fact that they are new courts differentiates them from the existing civil courts and, as explained above, they cannot be subordinate courts.

When the jurisdiction to enforce the new rights or liabilities is conferred upon the existing civil courts or upon the officers presiding over them, the question arises whether they exercise the new powers as civil courts or as different courts, i. e., as *persona designate*. It is essentially a question of interpretation of the Act conferring the powers to enforce the new rights or liabilities; if the intention is to create new courts, they act as *persona designata*, but not if its intention is that the new rights and liabilities are to be enforced in the exercise of the existing jurisdiction of the courts. A District Judge hearing an election petition under the U. P. District Boards Act was held in the case of (Rao) Masoon Ali Khan Vs. (Rao) Ali Ahmad Khan to be a *persona designata* and not a civil court.

Mukerji J. relied upon the provision in the District Boards Act that he will have the powers and privileges of a civil court and also upon the fact that the power to hear an election petition is conferred not upon the District Judge's court but upon the District Judge. Because the power was conferred not upon an existing civil court but upon an officer presiding over an existing civil court, the intention of the Legislature was held to be to create a new court for decision of election petitions.

It was just a chance that the officer presiding over the new court happened to be an officer presiding over an existing civil court; but merely because he would function as a civil court in one capacity, it could not be said that he would function as a civil court in the new capacity. If an engineer invested with the same powers would not have been thought to be a civil court when exercising them, there was no reason for the District Judge's being thought to be a civil court when exercising them. The question whether he was a civil court or not was with reference to the proceeding which he was holding; it was whether he was a civil court when deciding an election petition under the District Boards Act,

It would have been absolutely irrelevant to consider whether he would have been a civil court when exercising some other power such as that of hearing an appeal from a Munsif under the Code of Civil Procedure. In the case of AIR 1949 Lah 131 (FB) (E) at p. 162 a distinction was drawn between the powers conferred upon an admittedly subordinate court as a court and the powers conferred upon

a presiding officer of such a court as a persona designata. In *Mt. Dirji Vs. Smt. Goalin, Harries, C. J., and Fazl Ali and Manohar Lall, JJ.*, held that a commissioner appointed under the Workmen's Compensation Act, 1923, is a court subordinate to the High Court within the meaning of Section 115. Fazl Ali J. said at p. 68:--

"Persona designata means a person indicated in a statute or legal instrument (such as a will, etc.) not by name but either by official designation or as one of a class (such as "my heir at law"). In some of the Indian statutes special powers have been delegated to certain officers of the Court who are referred to therein by their official designation, such as the District Judge, the Chief Judge of the Small Cause Court, etc.

The question which has to be asked in such cases is whether the person so designated has been invested with the powers as a Court or otherwise. If he is invested with the powers as a Court, the necessary implication is that the jurisdiction of the Court is enlarged and its decision is subject to all the incidents of such jurisdiction: see *National Telephone Co. Ltd. v. Postmaster General* (1913) A. C. 546 (H). If the powers are conferred on him not as a Court, he is a mere persona designata and his decision will not be subject to the incidents of such jurisdiction as the Court ordinarily exercises." I would respectfully suggest a small amendment; it is that the question rather is whether the new powers are made to be exercised in the course of the existing jurisdiction of the court or as a new court, than whether they are to be exercised as a court. A persona designata can be a court; the real question is whether he is a civil court or a different kind of court. A civil court exercising powers u/s 10 of the Bengal and Madras Native Religious Endowments Act (No. XX of 1863) was held by the Privy Council to be acting as a civil court and not merely as a persona designata, vide *Balakrishna Udayar v. Vasudeva Ayyar* AIR 1917 PC 71 (I). The powers under the Act were conferred upon civil Courts and not upon officers who accidentally happened to preside over them; in other words the Legislature intended the powers to be exercised by the existing civil Courts in the course of their ordinary jurisdiction.

In the case of AIR 1944 288 (Nagpur) (J), Vivian Bose, J., stated at p. 289, with reference to a First Subordinate Judge being appointed an authority under the Payment of Wages Act, 1936, that "it so happens that the "authorities" here are Judges here, but they need (not) be and It would be anomalous to hold that when the "authority" is a Judge the High Court will have control but none when he is a Revenue Officer or plain Mr. X. Reference also may be made to *Mt. Mithan and Another Vs. Municipal Board of Orai and State of U.P.*, , in which a Bench, of which I was a member, held that a High Court has no jurisdiction to revise an order passed by a Magistrate u/s 247 (1) of the Municipalities Act, because he was acting as a persona designata.

5. The words "subordinate Courts" are to be found in the Constitution; see the heading of Ch. VI. The Courts mentioned in Ch. VI are described as subordinate in relation to the Courts described in Ch. V as the High Courts. Thus for the

purposes of the Constitution the Courts mentioned in Ch. VI are the Courts subordinate to the High Court. Courts of District Judges are expressly mentioned in Ch. VI; the other Courts are simply described as the Courts subordinate to them or presided over by members of the Judicial Service other than District Judges. No special Courts created under the local or special Acts like the Payment of Wages Act, the District Boards Act, the Zamindari Abolition and Land Reforms Act, etc., are within the contemplation of Ch. VI of the Constitution.

One of the constitutional requirements of a subordinate Court is that it must be presided over by a person appointed by the Governor in accordance with the rules made by him after consultation with the High Court, vide Article 234. If a local Act, such as the Zamindari Abolition and Land Reforms Act, does not intend that persons appointed to preside over Courts created by it are required to be appointed in accordance with the rules made by the Governor after consultation with the High Court, it means, that it does not intend the new Courts to be subordinate Courts, at least within the meaning of the Constitution. Article 228 invests a High Court with the power to withdraw a case pending in "a Court subordinate to it" in certain circumstances. Article 227 confers powers of superintendence over all Courts and tribunals upon the High Court.

It is to be noted that the word "subordinate" is not used in Article 227 at all and that tribunals also have been brought within its supervisory jurisdiction. Therefore, a Court does not become subordinate to the High Court merely because it is under its supervisory jurisdiction. The provisions of Article 237 show that magisterial Courts are not subordinate Courts within the meaning of Ch. VI. If they are not subordinate Courts, other Courts created under local and special Acts, such as Zamindari Abolition and Land Reforms Act, also are not subordinate Courts.

6. Just as u/s 115 the High Court exercises revisional jurisdiction over a Court subordinate to it and which Courts are subordinate to the High Court for this purpose is laid down in Section 3, so also the High Court exercises revisional jurisdiction over all inferior criminal Courts u/s 439 of the Code of Criminal Procedure and Sections 17 and 21 lay down which Courts are subordinate to which.

The CPC and the Code of Criminal procedure are the two principal Codes of Procedure investing certain Courts with certain powers over subordinate Courts and they contain provisions laying down which Courts are subordinate to them. There are clear indications in the Code of Criminal Procedure that subordination of one Court to another is a matter of statutory provision and not dependent upon any general rule such as that a Court is subordinate to that Court to which appeals would ordinarily lie from its judgments and orders or which exercises revisional or supervisory jurisdiction. The Code of Criminal Procedure distinguishes between subordination and subjection to appellate jurisdiction showing undisputedly not only that the two are not the same thing but also that one does not depend upon the other.

Section 17 (1) makes all Magistrates subordinate to the District Magistrate though no appeal lies from their judgments to the District Magistrate; under Sub-section (2) some Magistrates are declared to be subordinate to the Sub-Divisional Magistrate though he has no appellate or supervisory jurisdiction over them; and in Sub-section (5) it is provided that some Magistrates, though subject to the Sessions Judge's appellate jurisdiction, are not subordinate to him (this is subject to some exceptions, but the exceptions are only those referred to in Section 195). Section 346 refers to a Magistrate to whom another Magistrate is subordinate; this clearly refers to the subordination mentioned in Section 17 and not to any subordination on the basis of subjection to appellate jurisdiction.

Section 21 (2) empowers Government to declare which Presidency Magistrates are subordinate to the Chief Presidency Magistrate; this provision not only excludes the idea of subordination being based upon subjection to appellate jurisdiction but also indicates that which Court is subordinate to which is a matter of statutory provision. Section 195 (1) (a) refers to a subordinate public servant; since there cannot be judicial subordination, the subordination here must necessarily mean administrative subordination.

In Sub-section (3) subordination is made synonymous with subjection to appellate jurisdiction only for purposes of Section 195, which means that there is no general rule that a Court is subordinate to that Court to which appeals lie from its judgments. If subordination for the purposes of the Code of Criminal Procedure does not depend upon subjection to appellate jurisdiction, there is no justification for giving a different meaning to the word "subordinate" used in similar context in the Code of Civil Procedure.

7. In *Makhan Lal and Others Vs. Secy. of State*, a District Judge acting on a reference made by a Collector u/s 18 of the Land Acquisition Act, 1894, was held to be a Court subordinate to the High Court. Mukerji, J., speaking on behalf of the Full Bench observed at p. 263;--"The fact that an appeal is allowed from an award of the Court constituted under the Land Acquisition Act, is, in our opinion, conclusive of the fact that the "Court" is subordinate to the High Court".

Subordination in the second sense means being under the authority of somebody; whatever may be the nature of the authority exercised by the latter, the former is subordinate. There may be administrative subordination, there may be judicial subordination, or there may be mere executive subordination. Subjection to appellate jurisdiction is some kind of subordination, but I respectfully disagree that this is the kind of subordination referred to in Section 115. There is nothing in the CPC or the Bengal and Assam Civil Courts Act or the Zamindari Abolition and Land Reforms Act to suggest that sub-ordination is synonymous with-subjection, to appellate jurisdiction.

The Bengal and Assam Civil Courts Act and also the CPC state which Courts exercise appellate jurisdiction over which and yet both contain provisions as to which Courts are subordinate to which. Some of the Courts described as

subordinate to others are under the others appellate jurisdiction according to other provisions; if merely on account of their being subject to the others appellate jurisdiction they become subordinate to them, they would not have been again described as subordinate to them. Having already provided for appellate jurisdiction of some Courts over others the Legislature would not have provided separately for subordination by some Courts to others, at least not without stating the general rule, if there were any such rule, that a Court is subordinate to the Court to which appeals lie.

If the rule contained in Section 3, were a rule in addition to the supposed general rule, we would have expected the Legislature to refer to it; it would not have provided for subordination of some Courts without giving an indication in some manner of the existence of it or without suggesting that the provision is supplementary to the general rule. A District Court is amenable to the appellate jurisdiction of the High Court and every inferior civil Court is amenable to the appellate jurisdiction of the District Court and the High Court; there would have been no necessity of enacting Section 3 if there were a general rule such as is contended for. The general rule is not to be found in the General Clauses Act.

In *Bishambhar Nath Vs. Achal Singh*, Iqbal Ahmad, J., thought that a Court is subordinate to another Court if the latter has appellate, revisional or supervisory jurisdiction over it, He was dealing with a District Magistrate hearing an appeal u/s 318 of the U. P. Municipalities Act of 1916, and held that he was not a Court subordinate to the High Court within the meaning of Section 115. To say that a Court is subordinate to another if the latter has revisional jurisdiction over it is only begging the question; the enquiry itself was into the existence of the revisional jurisdiction and not into the subordination of one Court to the other. The High Court's revisional jurisdiction depends upon the subordination of the other Court.

In the case of *Sultan Ali (E)*, it was stated by the learned Chief Justice at p. 161 that "one clear indication of subordination has always been held to be that the Court whose subordination is in question is subject to the appellate jurisdiction of the High Court", but only to support the proposition that an election petition commissioner was not subordinate to the High Court because the latter had no appellate jurisdiction over him. I doubt if he meant to convey that if an appeal lies from a judgment or order of one Court to another it amounts to its being subordinate to the other.

An election petition commissioner is not subordinate to the High Court within the meaning of Section 115 of the Code, but that is not because the latter has not appellate jurisdiction over him but because of the reasons stated above. I have given instances of a Court's being subordinate to another which does not exercise appellate jurisdiction over it and of a Court's not being subordinate to another even though the latter exercises appellate jurisdiction over it; these instances show that there is as dependence between subordination to another Court and the subjection to its appellate jurisdiction.

Moreover it is laid down in Section 115 that revisional jurisdiction cannot be exercised if an appeal lies to the High Court; this provision is inconsistent with the idea that a Court is subordinate to the High Court if appeals from its judgments lie to it. The revisional jurisdiction is to be exercised because of the want of appellate jurisdiction; the Court over which it is to be exercised must, therefore, not be a Court within the High Court's appellate jurisdiction.

In *Sudagar Chaudhary Vs. Radharaman Prasad and Another*, Shearer, stated at p. 334 that it was impossible to say that a Court is subordinate to the High Court if the latter is given no power of superintendence over it and when the statute creating it does not confer any appellate or revisional jurisdiction over it. A District Judge when exercising jurisdiction u/s 78 of the Bihar and Orissa Village Administration Act (No. III of 1922) was held to be not a Court subordinate to the High Court within the meaning of Section 115, C. P. C. All that was meant by Shearer, J., is that without some authority being exercisable over him by the High Court he could not be held to be a subordinate Court; he did not mean to lay down that if the High Court had appellate jurisdiction over him he would be a subordinate Court.

8. A High Court has jurisdiction to punish contempt of subordinate Courts. There is no warrant for saying that any Court that is subordinate to a High Court for the purpose of Section 2 of the Contempt of Courts Act is subordinate to it for the purposes of Section 115, C. P. C., because the word "subordinate" used in Section 115, C. P. C., cannot be interpreted in the same manner as the word used in Section 2 of the Contempt of Courts Act, especially when the former Code states which Courts are subordinate to it and the latter Act does not. Any Court over which a High Court exercises any authority, appellate, revisional or supervisory, may be subordinate to it for the purposes of the Contempt of Courts Act, but is not necessarily subordinate to it for the purpose of Section 115.

"In *Satdeo Pandey Vs. Baba Raghav Das*, , an Assistant Collector, first class, functioning under the U. P. Land Revenue Act, was held to be subordinate to the High Court within the meaning of Section 2 of the Contempt of Courts Act. Waliullah, J., observed at p. 433:--""There may or may not be an appeal or a revision available to the High Court against a particular order under a particular statute passed by the revenue Court. It is the position of the revenue Court as a whole and not its position with reference to a particular order passed by it that it has to be considered."

This observation suggests that a Court may be subordinate to another Court even without being under its appellate jurisdiction, in other words, subordination is not dependent upon subjection to appellate jurisdiction. A Sub-Divisional Magistrate when holding an inquiry u/s 176 of the Code of Criminal Procedure was held to be a subordinate Court within the meaning of the same provision. In *Advocate-General v. Maung Chit Maung* AIR 1940 Reng 68 (O). it was held that the words "subordinate Court" were used in a wide sense to include any Court within the superintendence of the High Court.

In *Sukhdeo Baiswar Vs. Brij Bhushan Misra and Others*, , a Panchayat Adalat constituted under the U. P. Panchayat Raj Act (No. XXVI of 1947) was held to be a Court subordinate to the High Court within the meaning of the same provision. See also *State Vs. Brahma Prakash and Others*, . All Courts over which a High Court exercises appellate, revisional or supervisory jurisdiction are held to be subordinate to it within the meaning of this provision, but the words are used in different context and in another statute and cannot be blindly, interpreted in the same manner. The very first qualification that the allegedly subordinate Court within the meaning of Section 115 must be a civil Court is not a, necessary qualification of a Court contemplated by the Contempt of Courts Act to be subordinate to a High Court.

9. The Judicial Committee of the Privy Council exercised appellate jurisdiction over the Federal Court of India and a Bench of two Judges of a High Court exercises appellate jurisdiction over the judgment of a single Judge in some cases. I doubt if the Federal Court could be said to be subordinate to the Judicial Committee and the single Judge, to a Bench of Judges, A single Judge acts as a High Court and so does the Bench; it would be meaningless to speak of a High Court's being subordinate to itself. If the same principle were stretched a little further one would have to hold that all individuals and all authorities including Government are all subordinate to every Court, including that of a Munsif, because every Court sits in judgment over their acts or orders and can quash them if they are against the law.

The judicial process involved in quashing an order in a suit is not any different from that involved in quashing an order on appeal. If a Court is subordinate to another Court which can quash its order on appeal, I do not see any reason why every person and every association of persons cannot be held to be subordinate to every Court.

10. In the cases of *Turabali v. Sorabji (J)* and *Subhan and Others Vs. Rex*, , an authority appointed under the Payment of Wages Act was held to be not a subordinate Court. In the cases of *Masoon Ali Khan v. Ali Ahmad Khan (F)* and *Sultan Ali v. Nur Hussain (E)*, election petition commissioners were held to be not subordinate Courts. In *Gaya Prasad v. Kalap Nath*, 4 Luck 539i AIR 1929 Oudh 389 (S), a Full Bench of the Chief Court of Avadh held that a District Judge deciding a second appeal u/s 119 of the Oudh Rent Act was not a Court subordinate to the High Court within the meaning of Section 115. A District Magistrate acting u/s 318 of the Municipalities Act was held to be not a subordinate Court in *Bishambhar Nath v. Achal Singh (B)*.

In *Mt. Dirji v. Mt. Goalin (G)*, the Full Bench did not decide whether a commissioner appointed under the Workmen's Compensation Act is a subordinate Court. In *Purshottam Janardan v. Mahadu Pandu (C)*, a Collector hearing an appeal under the Mamlatdar's Courts Act was held to be a subordinate Court, but the only reason given was that he acted as a Court. In *Nilmoni Singh Deo v. Taranath* ILR Cal 295 (PC) (T), a Collector exercising

powers under Act X of 1859 was held to be a civil Court within the meaning of Act VIII of 1859. That decision is of no help now when we are governed by the CPC of 1908.

The Judicial Committee based their decision simply upon the fact that a suit for recovery of rent is a civil suit or proceeding, though they realised that there is a certain distinction between the rent Courts and the civil Courts referred to in the Act creating the rent Courts,

11. I do not see any merit in the contention advanced on behalf of the opposite party that Section 330 of the Zamindari Abolition and Land Reforms Act bars the jurisdiction of the High Court over any order passed under Part I of the Act and that consequently it cannot entertain an application in revision. The jurisdiction that is barred is that of a civil Court and it was contended that a High Court is a civil Court. As I said earlier, civil Courts are created by the Bengal and Assam Civil Courts Act; the High Court is created not by that Act but by the Constitution. It does not matter in the least if Section 3 of that Act refers to the Courts of the District Judge, the Civil Judge and the Munsif as "civil Courts under this Act."

The Act consolidates and amends the law relating to civil Courts in U. P. and it is the only Act that creates civil Courts in U. P. Therefore all the civil Courts that exist in U. P. are those created under the Act. When other Acts refer to civil Courts, they do not refer to some other civil Courts, they refer to Courts which are known as civil Courts under the Bengal and Assam Civil Courts Act. When it consolidates the law relating to civil Courts, it excludes the possibility of there being any civil Court other than the civil Courts mentioned in Section 3. The High Court exercises jurisdiction over all sorts of Courts; merely because it exercises jurisdiction over civil Courts it would be wrong to treat it as a civil Court. The Bengal and Assam Civil Courts Act itself confers upon the High Court appellate jurisdiction over the civil Courts.

There is no foundation for the view that appellate jurisdiction over a civil Court can vest only in another civil Court. "High Court" is defined in the General Clauses Act to mean the highest civil Court of appeal in the State. This Court is a High Court and therefore it must be the highest civil Court of appeal in U. P. This again does not mean that it is a civil Court, though it has been invested with the highest appellate jurisdiction over civil Courts. What is meant by the highest civil Court of appeal is the Court invested with the highest appellate jurisdiction over civil Courts; it itself need not be a civil Court. Therefore, Section 330 does not exclude the jurisdiction of this Court.

11a. My finding is that the compensation officer is not a Court subordinate to the High Court within the meaning of Section 115, C. P. C.

12. The order passed by the compensation officer was certainly unsound and illegal. Under Order 1, Rule 10 (2), C. P. C., he could bring on the record any person who ought to have been joined or whose presence before him was

necessary in order to enable him effectually and completely to adjudicate upon and settle all the questions involved in the applicant's objection. Opposite party No. 2 was neither a necessary nor a proper party. The objection of the applicant about the rent payable by it could be decided without its being a party; the decision would not bind the opposite party even if it were a party before him. Since it could not be bound in any case and since the question of the rent payable by it was the question only between the applicant and the State, its presence could not be said to be necessary for effectually and completely adjudicating upon and settling the question raised by the applicant

The opposite party was not at all interested in the compensation payable to the applicant and the Compensation Officer could not give a final decision on the relationship existing between it and the applicant. It would be for the applicant to prove what relationship existed between her and it and what was the rent payable by it to her; this could have been done by her even without its being a party. Inherent powers also were relied upon; there was absolutely no occasion for the Compensation Officer's departing from the CPC in order to serve the ends of justice or to prevent an abuse of process of Court. I am surprised at the attitude adopted by the opposite party; it opposes this application but it had itself objected to its being impleaded before the Compensation Officer. This fact will have an important bearing on the question of costs of this application.

13. The opposite party contended that impleading a party does not amount to deciding a case and relied upon *Shanker Ban Vs. Ram Deo and Others and Brij Manohar v. Ramanand* ILR 14 Luck 447 : (AIR 1939 Oudh 102) (V). The decision in the Allahabad case proceeded on the basis that a mere interlocutory order is not a decision of a case.

The view taken by this Court in *Ramrichpal Singh Vs. Dayanand Sarup* minor through *Bhagwat Sarup*, , is that even an interlocutory order can be a case decided, when a person who was not a party to the proceeding is made a party to it, it must have been on the basis of a case distinct from the proceeding itself. So long as he was not a party the proceeding relating to impleading him was a proceeding distinct from the proceeding to which he was to be impleaded and it was in consequence of the order passed in that proceeding that he became a party to the main proceeding.

14. Lastly it was contended on behalf of the opposite party that no question of jurisdiction, is involved in the order of the Compensation Officer. It relied upon *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, , laying down that however gross and palpable an error may be it cannot be corrected by the High Court in revision. Here the Compensation Officer had no jurisdiction; to implead the opposite party; he had jurisdiction to implead a person who was a necessary or proper party but not any other person. In the alternative he acted with material irregularity in exercising his: jurisdiction of impleading a party; he acted suo motu and against the wishes of all parties. The applicant did not want the opposite party to be impleaded and the opposite party itself objected to its being

impleaded.

15. Since however the Compensation Officer is held to be not a Court subordinate to this Court his order cannot be interfered with u/s 115, C. P. C. I, therefore, dismiss the application but make no order for costs.

16. After the arguments were heard and after I had dictated most of this judgment an application was made on behalf of the applicant for treating this application under Article 227 of the Constitution. Really the application should have been made for the issue of a writ of certiorari; the order of the Compensation Officer being without jurisdiction might have been quashed on certiorari. What can be done under a writ, order or direction under Article 226 can no longer be done under the supervisory jurisdiction. It is not possible to treat this application as an application for a writ of certiorari, because it does not comply with the formalities required under the rules of this Court for such an application. Further the power to issue certiorari is discretionary; certiorari does not lie as a matter of course against every illegal or erroneous exercise of jurisdiction."

The applicant does not stand to suffer on account of the opposite-party's being impleaded as a party; she has at least not suffered so far. If the final order passed by the Compensation Officer is prejudicial to her and would not have been passed if the opposite-party had not been impleaded, I suppose she will have the right to seek adequate remedy against it, at least under Article 226 if under no other provision. I, therefore, refuse to treat this application as one under Article 227 of the Constitution.

17. The application is dismissed.